

**ENTERED**

October 11, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

ERIC AVILA,

VS.

LORIE DAVIS, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division.

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MISC. ACTION NO. M-18-01016

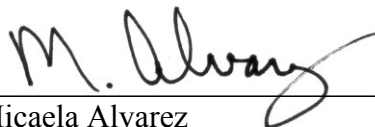
**ORDER ADOPTING REPORT AND RECOMMENDATION**

Before the Court is Petitioner Eric Avila's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which was referred to the Magistrate Court for a report and recommendation. On September 17, 2018, the Magistrate Court issued an Amended Report and Recommendation, recommending that Petitioner's § 2254 petition be dismissed without prejudice and a certificate of appealability be denied. The time for filing objections has passed and no objections have been filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Amended Report and Recommendation for clear error.<sup>1</sup> Finding no clear error, the Court adopts the Amended Report and Recommendation in its entirety. Accordingly, it is hereby **ORDERED** that Petitioner's § 2254 petition is **DISMISSED** without prejudice, and a Certificate of Appealability is **DENIED**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 10th day of October, 2018.

  
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Micaela Alvarez  
United States District Judge

<sup>1</sup> As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.' " *Douglas v. United States Service Auto. Ass'n*, 79 F.3d 145, 1420 (5th Cir. 1996) (quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) *superseded by statute on other grounds by* 28 U.S.C. § 636(b)(1), *as stated in ACS Recovery Servs., Inc. v. Griffin*, No. 11-40446, 2012 WL 1071216, at \*7 n. 5 (5th Cir. April 2, 2012).